

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer AA-67609.

Reversed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases: First-Qualified Applicant

The failure to date the signature on an over-the-counter oil and gas lease offer is not a per se disqualification of the offeror and a decision rejecting an offer on this basis is properly reversed.

APPEARANCES: Henry W. Odlozil, Sr., pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Henry W. Odlozil, Sr., has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), which rejected his noncompetitive over-the-counter oil and gas lease offer AA-67609 because the offer was signed but not dated.

On December 7, 1984, BLM received an "Offer to Lease and Lease for Oil and Gas" from appellant for sec. 30 of T. 16 S., R. 8 W., Kateel River Meridian. In rejecting appellant's offer, BLM cited 43 CFR 3111.1-1 which requires an over-the-counter offer to be "signed in ink and dated by the offeror." In his statement of reasons for appeal appellant states that because his agent, Commonwealth Management Corporation, filed the lease agreement in appellant's name, he "was unaware of the error on the 'offer to lease.'" The requirement that the over-the-counter lease offer form be dated when signed is set forth in the regulations as follows: "The original copy of each offer shall be * * * manually signed in ink and dated by the offeror or the offeror's duly authorized agent or attorney-in-fact, * * *." 43 CFR 3111.1-1(a). The regulation at 43 CFR 3111.1-1(f) states: "Except as otherwise specifically provided in the regulations in this group [Group 3000 - Minerals Management], an offer which is not filed in accordance with the regulations in this part [Part 3110 - Noncompetitive Leases] shall be rejected."

For a long period of time, the Department followed a uniform practice of strictly applying the regulations requiring signed and dated applications to reject undated noncompetitive oil and gas lease applications. See, e.g., Lynn C. Haas, 62 IBLA 25 (1982); John R. Mimick, 25 IBLA 107 (1976). The signer (offeror) was considered to have certified his qualifications as of the date appearing adjacent to the signature, which requirement was deemed consistent with the statutory obligation of the Secretary of the Interior under 30 U.S.C. § 226(c) (1982) to issue noncompetitive oil and gas leases only to the first-qualified applicant. See Evelyn Chambers, 31 IBLA 381 (1977); Cissie A. Reinauer, 29 IBLA 295 (1977).

The regulations governing the dating of oil and gas lease applications reached their zenith in 1980 when the regulations concerning the filing of simultaneous noncompetitive oil and gas lease applications were amended to not only require that the signature be dated, but further require that the date reflect the application was signed within the pertinent simultaneous filing period. 43 CFR 3112.2-1(c), 45 FR 35164 (May 23, 1980). Thus, the simultaneous application was subject to rejection where it bore a date outside the simultaneous filing period, notwithstanding the fact the applicant's signature was dated. Grace Grant, 58 IBLA 366 (1981).

[1] However, the courts have not always been impressed with the significance attached by the Department to the requirement that the applicant's signature be dated. In reversing rejection of a simultaneously filed oil and gas lease application for failure to date the signature of each applicant, the court held: "A signature date requirement serves no important purpose; the only material date is the one on which the DEC [Drawing Entry Card] itself is filed with the Department. This court's Winkler [1/] ruling established that non-substantive errors are inappropriate grounds for finding applications defective." Ahrens v. Andrus, 690 F.2d 805, 808 (10th Cir. 1982).

The subsequent case of Conway v. Watt, 717 F.2d 512 (10th Cir. 1983), 2/ represents a landmark in the adjudication of the regulatory requirement that the signature on an oil and gas lease application be dated. The Conway court rejected the argument raised by the Department that the truth of the applicant's representations regarding qualifications may change with time thus requiring a dated representation in order to be meaningful. In reversing a Board decision rejecting an undated simultaneous oil and gas application, the court held the inadvertent omission of a date by the applicant was a nonsubstantive defect in the absence of any evidence of misrepresentation regarding qualifications and, hence, application of the date requirement to reject Conway's application was arbitrary. Id. at 515-16. After noting that the "overwhelming weight of judicial authority belies the Secretary's assertion

1/ Winkler v. Andrus, 594 F.2d 775 (10th Cir. 1979), rev'g, Joseph A. Winkler, 24 IBLA 380 (1976).

2/ Rev'g Joe Conway, 59 IBLA 314 (1981).

that a date is essential to his task of assessing the qualifications of lease applicants," 717 F.2d at 516, the court went on to hold

[A]lthough the Secretary can require a signature date, he cannot make its absence a per se disqualification. When a date inadvertently is omitted and if the Secretary is concerned that that omission is fraudulent, he may require an applicant to produce proof that his or her signature was made on a qualifying date and that all other qualifications were satisfied as of that date. Such subsequent verification of qualifying status provides an adequate basis for the Secretary to proceed against an applicant on the basis of fraud. The Secretary's contrary view lacks a rational basis in the law. [Footnote omitted.]

717 F.2d at 517.

Subsequently, in KVK Partnership v. Hodel, 759 F.2d 814 (10th Cir. 1985), 3/ The court upheld rejection of an oil and gas lease partnership applicant for failure to provide evidence of qualifications against the assertion the requirement was arbitrary. In distinguishing Conway, the court in KVK Partnership noted that "the signature date was a technical requirement which did not facilitate determining an applicant's qualifications, and [we held in Conway] that its omission could not therefore be per se grounds for disqualification. * * * Read in light of its facts, Conway holds only that a BLM regulation may not be per se grounds for disqualification if it does not further a statutory purpose." 759 F.2d at 816. This Board has subsequently applied the principle of Conway to reverse decisions rejecting undated simultaneous oil and gas applications where the evidence establishes the application was in fact signed within the filing period prescribed by regulation. See Ruth C. Bezirium, 86 IBLA 29 (1985). The regulation at 43 CFR 3102.4 regarding signatures on oil and gas lease offers has been amended to provide that "applications filed under Subpart 3112 of this title shall not be deemed unacceptable for the failure to be dated." 49 FR 26920 (June 29, 1984).

The issue raised by this appeal is whether, consistent with the decisions in Conway and KVK Partnership, the failure to date an over-the-counter oil and gas lease offer as required by the regulation is properly deemed a per se disqualification of appellant's lease offer requiring rejection. In terms of the significance of the date for purposes of the offeror's qualifications, the critical date is the date of filing of the lease offer (and ultimately, if a lease issues, the date of lease issuance) as noted by the Ahrens court. We are unable to find the requirement that the signature be dated serves a statutory purpose which could justify imposing this as a per se ground for disqualification. Accordingly, we reverse rejection of appellant's lease offer on this basis.

3/ Aff'g KVK Partnership, 69 IBLA 199 (1982).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge.

